

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|  |   |            |
|--|---|------------|
| In the Matter of                             | ) |            |
|  | ) |            |
| Mediacom Southeast LLC,                      | ) | CSR-6866-E |
| On behalf of its subsidiaries and affiliates | ) |            |
|  | ) |            |
| Petition For Determination of Effective      | ) |            |
| Competition in                               | ) |            |
| Eight Kentucky Communities                   | ) |            |
|  | ) |            |

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 20, 2007**

**Released: July 23, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers a petition for special relief that Mediacom Southeast, LLC (“Mediacom”) has filed with the Commission pursuant to Sections 76.7, 76.905(b)(2), and 76.907 of the Commission's rules for a determination that Mediacom is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in seven Kentucky communities (“Franchise Areas”) as listed in Attachment A and B. No opposition was filed.<sup>3</sup>

**II. BACKGROUND**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the

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<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b) (4).

<sup>3</sup> On February 23, 2007, the Commission sent letters to various cable operators, including Mediacom in the above-captioned matter (Mediacom Southeast LLC, CSR 6866-E), informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association (“SBCA”) report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission’s letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petition. No opposition to Mediacom’s filing has been received by the Commission.

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other Commission cable regulations.<sup>7</sup>

3. Section 623(l) of the Act provides that a cable operator is subject to effective competition if any one of the four tests for effective competition set forth therein is met.<sup>8</sup> The “competing provider” test, set forth in Section 623(l)(1)(B) of the Communications Act, provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>9</sup> The “low penetration” test for effective competition set forth in Section 623(l)(1)(A) of the Communications Act, provides that a cable operator is subject to effective competition if fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.<sup>10</sup>

### III. DISCUSSION

#### A. Competing Provider Effective Competition

4. Under the first prong of the competing provider test, Mediacom must show that the franchise area is served by at least two unaffiliated MVPDs, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Mediacom states that two major providers of DBS service, DirecTV, Inc. (“DirecTV”) and EchoStar Communications Corporation (“EchoStar”), offer service to more than 50 percent of the households in the following Franchise Areas: Elkton, Hopkinsville, Pembroke, Todd, Trenton, Dover, and Stewart.<sup>11</sup> Similarly, Mediacom argues that consumers in these Franchise Areas are reasonably aware of the availability of DBS service because of the universal availability of DBS service together with DBS providers’ extensive national, regional, and local advertising efforts.<sup>12</sup> Finally, Mediacom asserts that DBS provides programming service comparable to services offered by Mediacom.<sup>13</sup> Thus, according to Mediacom, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.<sup>14</sup> Mediacom has submitted to the Commission DBS penetration data to confirm that it is the largest MVPD in all Franchise Areas listed in Attachment A. Mediacom admits that it is not the largest MVPD in Hopkinsville, Christian, Todd, and Stewart, Kentucky and does not identify the largest MVPD in those

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<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>7</sup> See 47 C.F.R. §76.905.

<sup>8</sup> See 47 U.S.C. § 543(l)(1)(A)-(D).

<sup>9</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>11</sup> See Petition at 2-3.

<sup>12</sup> See *id.* at 4 n.12.

<sup>13</sup> See *id.* at 5. Under the rules, comparable programming is offered by any MVPD able to offer “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.” 47 C.F.R. § 76.905(g).

<sup>14</sup> 47 U.S.C. §76.905(e).

Franchise Areas.<sup>15</sup> Mediacom asserts, however, that DBS penetrations in all Franchise Areas exceed 15 percent of the households.<sup>16</sup> Mediacom calculates DBS subscribership in the Franchise Areas based on 2000 Census household data and a Satellite Broadcasting and Communications Association (“SBCA”) Effective Competition Tracking Report reflecting the number of DBS subscribers within the specified zip code +4 extensions associated with the cable communities.<sup>17</sup> Based on these figures, Mediacom alleges that DBS subscribership ranges from 21.97 percent in Pembroke to 35.86 percent in Dover.<sup>18</sup>

6. With respect to the first prong of the competing provider test, the Commission agrees with Mediacom that residents of the Franchise Areas are reasonably aware of the availability of DBS service. We find that the DBS service of DirecTV and EchoStar is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>19</sup> Subscribership to DirecTV and EchoStar reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and EchoStar the third largest, MVPD provider during this period.<sup>20</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>21</sup> In light of the evidence of DBS subscribership, discussed below, we believe that residents of the Franchise Areas listed in Attachment A are reasonably aware that DBS service is available. With respect to the issue of programming comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>22</sup> Therefore, the first prong of the competing provider test is satisfied.

7. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data and the SBCA data, we find that the Petitioners have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted communities. Mediacom alleges that it has satisfied the second prong of the competing provider test with regard to Todd, Hopkinsville, and Stewart, but it has not met its burden for this portion of the test given our methodology for making this determination and the limited information Mediacom submitted.<sup>23</sup>

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<sup>15</sup> See Petition at 6.

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 7.

<sup>19</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>20</sup> See *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd. 2503, 2540-41 (2006).

<sup>21</sup> See e.g., *MCC Iowa, LLC & Mediacom Iowa, LLC, Petition for Effective Competition in Various Local Franchise Areas*, 21 FCC Rcd. 3457, 3458 (2006); *Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd. 1175 (2006).

<sup>22</sup> See 47 C.F.R. § 76.905(g).

<sup>23</sup> See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (2002). In circumstances where the largest MVPD is unable to be identified, the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Mediacom is the largest MVPD provider in the Franchise Areas and determine that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Franchise Areas and determine that Mediacom’s subscribership is greater than 15 percent. When both determinations may be made, then the second prong of the competing provider test is met.

Mediacom has demonstrated that the aggregate DBS subscriber penetration rates in Hopkinsville, Todd, and Stewart exceed 15 percent, but Mediacom has not demonstrated that Mediacom's subscriber penetration rate in these communities exceed 15 percent. In Hopkinsville, the combined DBS penetration rate is 15.74 percent and Mediacom's penetration rate is 1.65 percent.<sup>24</sup> In Stewart, the combined DBS penetration rate is 46.39 percent and Mediacom's penetration rate is 8.62 percent.<sup>25</sup> In Todd, the combined DBS penetration rate is 32.68 percent and Mediacom's penetration rate is approximately 0.50 percent.<sup>26</sup> Therefore, Mediacom has not established that these communities are subject to competing provider effective competition.<sup>27</sup> However, as noted below, Mediacom has established that it has met its burden with regard to the low penetration test for both communities.

## **B. Low Penetration Effective Competition**

8. Mediacom also argues that it is subject to effective competition in Hopkinsville, Christian County, Todd, and Stewart, Kentucky under the "low penetration" test because Mediacom serves less than 30 percent of the local households in these franchise areas.<sup>28</sup> Mediacom compared the number of subscribers to its cable system serving these Franchise Areas to the U.S. Census household figures for each community.<sup>29</sup> This comparison revealed that Mediacom subscribership in each of these Franchise Areas is below 30 percent.<sup>30</sup> Based on this evidence, as summarized in Attachment B, Mediacom is subject to effective competition in these communities under the low penetration test for effective competition.

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<sup>24</sup> *See id.*

<sup>25</sup> *See id.*

<sup>26</sup> *See* Petition at 7-8.

<sup>27</sup> *See, e.g., Mediacom Illinois LLC, et. al.*, 21 FCC Rcd at 1177-78.

<sup>28</sup> *See* Petition at 8.

<sup>29</sup> *See id.*

<sup>30</sup> *See id.*

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the Petition for Determination of Effective Competition in the Franchise Areas filed by Mediacom Southeast LLC, **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any local franchising authority in the Franchise Areas overseeing Mediacom Southeast LLC, **IS REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>31</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>31</sup> 47 C.F.R. § 0.283.

## Attachment A

## CSR-6866-E

**Cable Operator Subject to Competing Provider Effective Competition**

| <b>Community</b> | <b>CUID</b> | <b>CPR*</b> | <b>2000 Census Households<sup>+</sup></b> | <b>DBS Subscribers<sup>+</sup></b> |
|------------------|-------------|-------------|---|------------------------------------|
| Elkton           | KY0659      | 25.06%      | 810                                       | 203                                |
| Pembroke         | KY0704      | 21.97%      | 305                                       | 67                                 |
| Trenton          | KY0907      | 27.12%      | 177                                       | 48                                 |
| Dover            | TN0227      | 35.86%      | 608                                       | 218                                |

\*CPR= Percent DBS penetration.

+ Household Data Figures, available at <http://factfinder.census.gov>.

## Attachment B

## CSR-6866-E

**Cable Operator Subject to Low Penetration Effective Competition**

| <b>Community</b>               | <b>CUID</b> | <b>Mediacom Penetration</b> | <b>2000 Census Households+</b> | <b>Mediacom Subscribers</b> |
|--------------------------------|-------------|-----------------------------|--------------------------------|-----------------------------|
| Hopkinsville                   | KY0896      | 1.65%                       | 12,174                         | 201                         |
| Oak Grove ("Christian County") | KY0538      | 6.09%                       | 24,851                         | 1,514                       |
| Todd                           | KY0906      | 0.50%                       | 4,569                          | 23                          |
| Stewart                        | TN0450      | 8.62%                       | 4,930                          | 425                         |

+ Household Data Figures, available at <http://factfinder.census.gov>.